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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Amador)

CHRISTOPHER ELIA, Plaintiff and Appellant, v. DEPARTMENT OF CORRECTIONS AND REHABILITATION, Defendant and Respondent.	C086872 (Super. Ct. No. 16-CV-9524)

Christopher Elia brought suit against the Superior Court of California, County of Amador (the Superior Court) and Doe defendants under 42 U.S.C. § 1983, claiming he was held in prison for up to an extra 110 days due to an incorrect abstract of judgment. The Superior Court demurred on the basis that it was not a person subject to suit under the federal statute, and, when it became apparent that Elia was seeking to name a court clerk as a defendant, on the basis that the clerk had quasi-judicial immunity. Elia appeals from a judgment of dismissal after the demurrer was sustained without leave to amend.

He contends it was error to find quasi-judicial immunity applied to the court clerk. We affirm.

BACKGROUND

Elia brought suit against the Department of Corrections and Rehabilitation (Corrections), the Superior Court, and Doe defendants. Corrections' demurrer was sustained without leave to amend. The second amended complaint (SAC) contained two causes of action for false imprisonment and a federal civil rights claim (42 U.S.C. § 1983). It alleged that Elia was sentenced to two years eight months in prison on December 4, 2014. With good time credits, he was scheduled for release on or about December 28, 2014. In February 2015, Corrections sent the Superior Court a letter that the abstract of judgment was incorrect. Elia's counsel informed the Superior Court that Elia was being held contrary to the terms of his plea bargain and brought a motion to correct the sentence. The Superior Court heard the motion in March and corrected the amount of credits Elia should have received. Corrections released Elia on April 18, 2015.

The SAC further alleged the identity of the clerks and employees responsible had not yet been ascertained. The person who signed the abstract of judgment would be identified by the signature. The exact calculation of Elia's proper release date had not yet been determined.

The Superior Court demurred to the SAC on the bases that it failed to state sufficient facts to state a claim and it was uncertain. The demurrer argued the SAC failed to allege compliance with Government Code section 915, subdivision (c)(1) for the false imprisonment claim. As to the 42 U.S.C. section 1983 claim, the demurrer asserted only the Superior Court was named as a defendant, and well-established law held the Superior Court was not a person subject to suit under section 1983. Further, the claim was uncertain because it failed to specify the constitutional rights that were allegedly infringed or who allegedly infringed those rights.

Elia dismissed count one, the false imprisonment claim.

In opposition to the demurrer, Elia noted the SAC included Doe defendants. The identity of the person who executed the abstract of judgment was sought through discovery. Once he learned that identity, he would amend the SAC.

In reply, on October 6, 2017, the Superior Court argued it would be futile to amend the SAC to name the employee because that employee had quasi-judicial immunity.

On October 12, the day before the scheduled hearing on the demurrer, the trial court issued its tentative ruling, sustaining the demurrer without leave to amend. The court found that even if Elia were to name the employee who prepared the abstract, this change would not be sufficient to overcome the SAC's failure to state a claim. The SAC alleged such person was the employee and agent of the Superior Court and there was no respondeat superior liability under 42 U.S.C. section 1983. Quasi-judicial immunity applied to court staff who perform ministerial but judicial functions.

The next day, Elia filed an objection to the Superior Court's reply, arguing he did not receive it until October 10 and he needed additional time to respond to the quasi-judicial immunity argument. He requested 30 days and noted his counsel had three cases set for felony trial on October 10 and although none went to trial, he was unavailable through October 10.

A week later Elia moved for reconsideration, asserting he had not had adequate time to respond to the Superior Court's reply raising the immunity issue.

Because no one requested oral argument, the tentative decision became final. Counsel for the Superior Court prepared a proposed order, noting that Elia's attorney indicated he would be at the hearing but did not appear. The trial court issued an order sustaining the demurrer without leave to amend.

Elia filed an amended motion for reconsideration. In opposition, the Superior Court noted a copy of its reply to opposition to the demurrer had been e-mailed to Elia's counsel on October 6. The trial court denied the motion for reconsideration.

Elia timely appealed from the subsequent judgment of dismissal.

DISCUSSION

I

Standard of Review

"When reviewing a judgment dismissing a complaint after the granting of a demurrer without leave to amend, courts must assume the truth of the complaint's properly pleaded or implied factual allegations. [Citation.] Courts must also consider judicially noticed matters. [Citation.] In addition, we give the complaint a reasonable interpretation, and read it in context. [Citation.] If the trial court has sustained the demurrer, we determine whether the complaint states facts sufficient to state a cause of action. If the court sustained the demurrer without leave to amend, as here, we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. [Citation.] If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. [Citation.]" (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

"In order to prevail on appeal from an order sustaining a demurrer, the appellant must affirmatively demonstrate error. Specifically, the appellant must show that the facts pleaded are sufficient to establish every element of a cause of action and overcome all legal grounds on which the trial court sustained the demurrer. [Citation.] We will affirm the ruling if there is any ground on which the demurrer could have been properly sustained. [Citation.]" (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751-752.)

II

Quasi-Judicial Immunity

Elia contends the trial court erred in sustaining the demurrer without leave to amend. Specifically, he contends the error was the finding that the court clerk who prepared the abstract of judgment in his case was entitled to quasi-judicial immunity.

"The concept of judicial immunity is long-standing and absolute, with its roots in English common law. It bars civil actions against judges for acts performed in the exercise of their judicial functions and it applies to all judicial determinations, including those rendered in excess of the judge's jurisdiction, no matter how erroneous or even malicious or corrupt they may be." (*Howard v. Drapkin* (1990) 222 Cal.App.3d 843, 851, fn. omitted.) "The rationale behind the doctrine is twofold. First, it 'protect[s] the finality of judgments [and] discourag[es] inappropriate collateral attacks.' [Citation.] Second, it 'protect[s] judicial independence by insulating judges from vexatious actions prosecuted by disgruntled litigants. [Citation.]' [Citation.]" (*Ibid.*)

Judicial immunity does not apply to all acts taken by judges. In *Forrester v. White* (1988) 484 U.S. 219, the United States Supreme Court distinguished between "paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court" and "administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform," even though such functions are essential to the functioning of the courts. The doctrine of absolute judicial immunity applies to the former, but not the latter. (*Id*. at p. 227.) "Here, as in other contexts, immunity is justified and defined by the *functions* it protects and serves, not by the person to whom it attaches." (*Ibid*.) The *Forrester* court held a judge is not entitled to judicial immunity for his decisions to demote and fire a probation officer. (*Id.* at p. 230.)

The high court "has extended absolute immunity to certain others who perform functions closely associated with the judicial process." (*Cleavinger v. Saxner* (1985) 474 U.S. 193, 200.) "Under the concept of 'quasi-judicial immunity,' California courts have extended absolute judicial immunity to persons other than judges if those persons act in a judicial or quasi-judicial capacity." (*Howard v. Drapkin, supra*, 222 Cal.App.3d at pp. 852-853.) Quasi-judicial immunity has been applied to court commissioners, grand jurors, administrative law hearing officers, arbitrators, and prosecutors. (*Ibid*.) "As with

the reason for granting judicial immunity, quasi-judicial immunity is given to promote uninhibited and independent decisionmaking." (*Ibid*.)

In *Antoine v. Byers & Anderson, Inc.* (1993) 508 U.S. 429 (*Antoine*), the United States Supreme Court considered whether a court reporter who failed to produce a transcript of a federal criminal trial was absolutely immune from damages liability. "When judicial immunity is extended to officials other than judges, it is because their judgments are 'functionally comparable' to those of judges -- that is, because they, too, 'exercise a discretionary judgment' as a part of their function." (*Id.* at p. 436.) The court found court reporters were not in this category because they were required to record verbatim the court proceedings. "They are afforded no discretion in the carrying out of this duty; they are to record, as accurately as possible, what transpires in court." (*Ibid.*) It did not matter that the task might be difficult or require high skill, or that it was extremely important or even indispensible or essential. (*Id.* at pp. 436-437.) "In short, court reporters do not exercise the kind of judgment that is protected by the doctrine of judicial immunity." (*Id.* at p. 437.)

In *In re Castillo* (9th Cir. 2002) 297 F.3d 940, 943, the issue was "whether a standing Chapter 13 Bankruptcy Trustee enjoys absolute quasi-judicial immunity for scheduling and noticing a bankruptcy confirmation hearing." The Bankruptcy Appellate Panel (BAP) found there was quasi-judicial immunity for scheduling the hearing because it was a discretionary function, but not for the ministerial act of giving notice. (*Id*. at p. 951.) The Ninth Circuit found, "The BAP went astray by segregating what is essentially one function -- controlling the docket -- into two discrete tasks. Both the scheduling and giving of notice of hearings are part of the judicial function of managing the bankruptcy court's docket in the resolution of disputes. This function is unquestionably discretionary in nature." (*Ibid.*)

The *Castillo* court relied on *Wilson v. Kelkhoff* (7th Cir. 1996) 86 F.3d 1438 where the court found members of a prisoner review board had immunity for failure to give

notice of a hearing. Wilson argued the board members should be denied immunity under *Antoine* because they did not exercise discretion; instead, they simply failed to follow the law. The Seventh Circuit rejected this argument. "Wilson misapprehends the nature of the Court's decision in *Antoine*. Consistent with the Court's prior opinion in *Forrester* [ ], *Antoine* stands for the proposition that ministerial acts unrelated to the function immunity is intended to protect are not covered by absolute immunity. *Antoine* and *Forrester* do not support the proposition that judicial acts that are part of the judicial function are excluded from absolute immunity because they could be characterized as nondiscretionary or even ministerial." (*Wilson,* at p. 1444.) "[C]onduct deserving of protection includes not only actual decisions, but also those mundane, even mechanical, tasks undertaken by judges that are related to the judicial process: 'The fact that the activity is routine or requires no adjudicatory skill renders that activity no less a judicial function.' " (*Id.* at pp. 1444-1445.) "Absolute immunity protects board members not only for the decision to revoke Wilson's supervised release, but the board members' actions that are 'part and parcel' of the decision-making process." (*Id*. at p. 1445.)

After *Antoine,* absolute quasi-judicial immunity has been extended "to court clerks and other nonjudicial officers for purely administrative acts -- acts which taken out of context would appear ministerial, but when viewed in context are actually a part of the judicial function." (*In re Castillo, supra,* 297 F.3d at p. 952.) "[W]hen determining whether a function is judicial in nature, a court must focus on the 'ultimate act' rather than the constituent parts of the act." (*Ibid.*)

Elia argues the court clerk is not entitled to quasi-judicial immunity because there is no discretion involved in completing the abstract of judgment. He makes the same mistake found in *Castillo*, segregating one function into separate tasks. (*In re Castillo, supra,* 297 F.3d at p. 951.) Here, the function at issue is rendering judgment, an indisputably judicial function of resolving disputes. (*Antoine, supra,* 508 U.S. at pp. 435-436.) Just as giving notice of a hearing is part of the scheduling function, preparation of

the abstract of judgment is "part and parcel" of the decision-making process in a criminal case. (*Wilson v. Kelkhoff, supra,* 86 F.3d at p. 1445.) "[T]he abstract is a contemporaneous, statutorily sanctioned, officially prepared clerical *record* of the conviction and sentence. It may serve as the order committing the defendant to prison [citation], and is ' "the process and authority for carrying the judgment and sentence into effect." [Citations.]' [Citation.]" (*People v. Delgado* (2008) 43 Cal.4th 1059, 1070.)

Because preparation of the abstract of judgment is part of the judicial function of rendering judgment, the court clerk who prepared the abstract in Elia's case is entitled to quasi-judicial immunity. Elia cannot state a claim against the court clerk. The trial court did not err in sustaining the demurrer without leave to amend.

III

Adequacy of Opportunity to Challenge Immunity Defense

Elia contends that sustaining the demurrer denied him due process because the defense of quasi-judicial immunity was raised for the first time in the Superior Court's reply to his opposition to the demurrer. He objects to the Superior Court raising a new issue in the reply brief and failing to file the reply at least five court days before the hearing as required by Code of Civil Procedure section 1005, subdivision (b). As a result of these actions, Elia contends he was not given sufficient time to research and respond to the immunity argument.[1]

The California Constitution expressly precludes reversal absent prejudice. "No judgment shall be set aside, or new trial granted, in any cause, on the ground of

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[1] Elia also claims the Superior Court improperly raised the quasi-judicial immunity defense because it was a defense for the *court clerk* to raise rather than the court. He adds that the court clerk has now appeared in the action. He fails to explain the significance of either point. "We do not serve as 'backup appellate counsel,' or make the parties' arguments for them. [Citation.] Consequently, the issue, to the extent one has been raised, is waived." (*Inyo Citizens for Better Planning v. Inyo County Bd. of Supervisors* (2009) 180 Cal.App.4th 1, 14.)

misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice." (Cal. Const., art. VI, § 13.)

Elia fails to show any miscarriage of justice. He concedes the issue now "has been fully briefed." Thus, we have resolved the issue after both parties have had the opportunity to brief it fully. Any error in the procedure in the trial court was harmless.

Elia additionally contends his failure to name the court clerk as a defendant in the SAC is not fatal and the SAC can be amended. Because we have determined Elia cannot state a cause of action against the court clerk, we need not address these contentions.

DISPOSITION

The judgment is affirmed.

/s/
Duarte, J.

We concur:

/s/
Robie, Acting P. J.

/s/
Renner, J.